

DRAFT 1  
SUBSTITUTE FOR  
HOUSE BILL NO. 5851

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 5827 (MCL 600.5827) and by adding chapter 30  
and section 5840.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 30

SEC. 3001. AS USED IN THIS CHAPTER:

(A) "AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT"  
MEANS THE AMERICAN MEDICAL ASSOCIATION'S GUIDES TO THE EVALUATION  
OF PERMANENT IMPAIRMENT (FIFTH EDITION, 2000).

(B) "ASBESTOS" MEANS ALL MINERALS DEFINED AS ASBESTOS IN 29  
CFR 1910.1001.

(C) "ASBESTOS CLAIM" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL



1 OR EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION, ARISING OUT OF,  
2 BASED ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS,  
3 INCLUDING LOSS OF CONSORTIUM AND ANY OTHER DERIVATIVE CLAIM MADE BY  
4 OR ON BEHALF OF AN EXPOSED PERSON OR A REPRESENTATIVE, SPOUSE,  
5 PARENT, CHILD, OR OTHER RELATIVE OF AN EXPOSED PERSON. ASBESTOS  
6 CLAIM DOES NOT INCLUDE A CLAIM FOR BENEFITS UNDER A WORKERS'  
7 COMPENSATION LAW OR VETERANS' BENEFITS PROGRAM OR CLAIMS BROUGHT BY  
8 A PERSON AS A SUBROGEE BY VIRTUE OF THE PAYMENT OF BENEFITS UNDER A  
9 WORKERS' COMPENSATION LAW.

10 (D) "ASBESTOSIS" MEANS BILATERAL DIFFUSE INTERSTITIAL FIBROSIS  
11 OF THE LUNGS CAUSED BY INHALATION OF ASBESTOS FIBERS.

12 (E) "BOARD-CERTIFIED IN INTERNAL MEDICINE" MEANS CERTIFIED BY  
13 THE AMERICAN BOARD OF INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF  
14 OSTEOPATHIC INTERNISTS.

15 (F) "BOARD-CERTIFIED IN OCCUPATIONAL MEDICINE" MEANS CERTIFIED  
16 IN THE SUBSPECIALTY OF OCCUPATIONAL-ENVIRONMENTAL OR OCCUPATIONAL  
17 MEDICINE BY THE AMERICAN BOARD OF PREVENTIVE MEDICINE OR THE  
18 AMERICAN OSTEOPATHIC BOARD OF PREVENTIVE MEDICINE.

19 (G) "BOARD-CERTIFIED IN ONCOLOGY" MEANS CERTIFIED IN THE  
20 SUBSPECIALTY OF MEDICAL ONCOLOGY OR ONCOLOGY BY THE AMERICAN BOARD  
21 OF INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF OSTEOPATHIC  
22 INTERNISTS.

23 (H) "BOARD-CERTIFIED IN PATHOLOGY" MEANS A PHYSICIAN WHO HOLDS  
24 PRIMARY CERTIFICATION IN ANATOMIC PATHOLOGY OR CLINICAL PATHOLOGY  
25 FROM THE AMERICAN BOARD OF PATHOLOGY OR THE AMERICAN OSTEOPATHIC  
26 BOARD OF PATHOLOGY AND TO WHOSE PROFESSIONAL PRACTICE BOTH OF THE  
27 FOLLOWING APPLY:



1 (i) THE PRACTICE IS PRINCIPALLY IN THE FIELD OF PATHOLOGY.

2 (ii) THE PRACTICE INVOLVES REGULAR EVALUATION OF PATHOLOGY  
3 MATERIALS OBTAINED FROM SURGICAL OR POSTMORTEM SPECIMENS.

4 (I) "BOARD-CERTIFIED IN PULMONARY MEDICINE" MEANS CERTIFIED IN  
5 THE SUBSPECIALTY OF PULMONARY DISEASE BY THE AMERICAN BOARD OF  
6 INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF OSTEOPATHIC  
7 INTERNISTS.

8 (J) "CERTIFIED 'B' READER" MEANS AN INDIVIDUAL QUALIFIED AS A  
9 FINAL OR "B" READER UNDER 42 CFR 37.51(B).

10 (K) "CIVIL ACTION" MEANS AN ACTION OR CLAIM OF A CIVIL NATURE  
11 IN COURT, WHETHER DEFINED AS A CASE AT LAW OR IN EQUITY OR  
12 ADMIRALTY. CIVIL ACTION DOES NOT INCLUDE AN ACTION RELATING TO A  
13 WORKERS' COMPENSATION LAW OR A PROCEEDING FOR BENEFITS UNDER A  
14 VETERANS' BENEFITS PROGRAM.

15 (L) "ECONOMIC LOSS" MEANS A PECUNIARY LOSS RESULTING FROM  
16 PHYSICAL IMPAIRMENT, INCLUDING THE LOSS OF EARNINGS OR OTHER  
17 BENEFITS RELATED TO EMPLOYMENT, MEDICAL EXPENSE LOSS, REPLACEMENT  
18 SERVICES LOSS, LOSS DUE TO DEATH, BURIAL COSTS, AND LOSS OF  
19 BUSINESS OR EMPLOYMENT OPPORTUNITIES.

20 (M) "EXPOSED PERSON" MEANS A PERSON WHOSE EXPOSURE TO ASBESTOS  
21 OR TO ASBESTOS-CONTAINING PRODUCTS IS THE BASIS FOR AN ASBESTOS  
22 CLAIM.

23 (N) "FEV1" MEANS FORCED EXPIRATORY VOLUME IN THE FIRST SECOND,  
24 WHICH IS THE MAXIMAL VOLUME OF AIR EXPELLED IN 1 SECOND DURING  
25 PERFORMANCE OF A SIMPLE SPIROMETRIC TEST.

26 (O) "FVC" MEANS FORCED VITAL CAPACITY, WHICH IS THE MAXIMAL  
27 VOLUME OF AIR EXPELLED WITH MAXIMUM EFFORT FROM A POSITION OF FULL



1     INSPIRATION.

2           (P) "ILO SCALE" MEANS THE SYSTEM FOR THE CLASSIFICATION OF  
3     CHEST X-RAYS CONTAINED IN THE INTERNATIONAL LABOUR ORGANIZATION'S  
4     GUIDELINES FOR THE USE OF ILO INTERNATIONAL CLASSIFICATION OF  
5     RADIOGRAPHS OF PNEUMOCONIOSES (2000).

6           SEC. 3002. AS USED IN THIS CHAPTER:

7           (A) "LUNG CANCER" MEANS A MALIGNANT TUMOR LOCATED INSIDE A  
8     LUNG. LUNG CANCER DOES NOT INCLUDE MESOTHELIOMA.

9           (B) "MESOTHELIOMA" MEANS A MALIGNANT TUMOR WITH A PRIMARY SITE  
10    IN THE PLEURA OR THE PERITONEUM THAT HAS BEEN DIAGNOSED BY A  
11    PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY USING STANDARDIZED  
12    AND ACCEPTED CRITERIA OF MICROSCOPIC MORPHOLOGY OR APPROPRIATE  
13    STAINING TECHNIQUES, OR BOTH.

14          (C) "NONECONOMIC LOSS" MEANS SUBJECTIVE, NONMONETARY LOSS  
15    RESULTING FROM PHYSICAL IMPAIRMENT, INCLUDING PAIN, SUFFERING,  
16    INCONVENIENCE, MENTAL ANGUISH, EMOTIONAL DISTRESS, DISFIGUREMENT,  
17    LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CONSORTIUM, INJURY TO  
18    REPUTATION, OR ANY OTHER NONPECUNIARY LOSS OF ANY KIND OR NATURE.

19          (D) "NONMALIGNANT CONDITION" MEANS ANY CONDITION THAT IS  
20    CAUSED OR MAY BE CAUSED BY ASBESTOS, OTHER THAN A DIAGNOSED CANCER.

21          (E) "NONSMOKER" MEANS A PERSON WHO DID NOT SMOKE CIGARETTES OR  
22    USE ANY OTHER TOBACCO PRODUCT WITHIN THE 15 YEARS IMMEDIATELY  
23    PRECEDING THE DIAGNOSIS THAT THE PERSON HAS A CONDITION OR DISEASE  
24    THAT IS THE BASIS FOR AN ASBESTOS OR SILICA CLAIM.

25          (F) "PATHOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A STATEMENT BY  
26    A PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY THAT MORE THAN 1  
27    REPRESENTATIVE SECTION OF LUNG TISSUE UNINVOLVED WITH ANY OTHER



1 DISEASE PROCESS DEMONSTRATES A PATTERN OF PERIBRONCHIOLAR OR  
2 PARENCHYMAL FIBROSIS IN THE PRESENCE OF CHARACTERISTIC ASBESTOS  
3 BODIES AND THAT THERE IS NO OTHER, MORE LIKELY EXPLANATION FOR THE  
4 PRESENCE OF THE FIBROSIS.

5 (G) "PREDICTED LOWER LIMIT OF NORMAL" MEANS, WITH RESPECT TO A  
6 TEST, THE FIFTH PERCENTILE OF HEALTHY POPULATIONS BASED ON AGE,  
7 HEIGHT, AND GENDER, AS REFERENCED IN THE AMA GUIDES TO THE  
8 EVALUATION OF PERMANENT IMPAIRMENT.

9 (H) "PUNITIVE DAMAGES" MEANS DAMAGES AWARDED AGAINST A  
10 DEFENDANT IN ORDER TO PUNISH OR DETER THE DEFENDANT OR OTHERS FROM  
11 ENGAGING IN SIMILAR BEHAVIOR IN THE FUTURE.

12 (I) "QUALIFIED PHYSICIAN" MEANS A PHYSICIAN WHO HAS ALL OF THE  
13 FOLLOWING QUALIFICATIONS:

14 (i) IS BOARD-CERTIFIED IN INTERNAL MEDICINE, ONCOLOGY,  
15 PATHOLOGY, PULMONARY MEDICINE, RADIOLOGY, OR OCCUPATIONAL MEDICINE.

16 (ii) HAS CONDUCTED A PHYSICAL EXAMINATION OF THE EXPOSED  
17 PERSON.

18 (iii) IS TREATING OR HAS TREATED THE EXPOSED PERSON AND HAS OR  
19 HAD A DOCTOR-PATIENT RELATIONSHIP WITH THE EXPOSED PERSON.

20 (iv) DOES NOT SPEND MORE THAN 10% OF HIS OR HER PROFESSIONAL  
21 PRACTICE TIME PROVIDING CONSULTING OR EXPERT SERVICES IN CONNECTION  
22 WITH ACTUAL OR POTENTIAL CIVIL ACTIONS, AND THE PHYSICIAN'S MEDICAL  
23 GROUP, PROFESSIONAL CORPORATION, CLINIC, OR OTHER AFFILIATED GROUP  
24 DOES NOT EARN MORE THAN 20% OF ITS INCOME FROM PROVIDING SUCH  
25 SERVICES.

26 (v) IS CURRENTLY LICENSED TO PRACTICE AND ACTIVELY PRACTICES  
27 IN THE STATE WHERE THE PLAINTIFF RESIDES OR WHERE THE PLAINTIFF'S



1 CIVIL ACTION WAS FILED.

2 (vi) RECEIVES OR HAS RECEIVED PAYMENT FOR THE TREATMENT OF THE  
3 EXPOSED PERSON FROM THE EXPOSED PERSON'S THIRD PARTY PAYER.

4 (J) "RADIOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A QUALITY 1  
5 CHEST X-RAY ON THE ILO SCALE OR, IF THE EXPOSED PERSON IS DECEASED  
6 AND PATHOLOGY AND A QUALITY 1 CHEST X-RAY ARE NOT AVAILABLE, A  
7 QUALITY 2 CHEST X-RAY, THAT SHOWS SMALL, IRREGULAR OPACITIES (S, T)  
8 GRADED BY A CERTIFIED "B" READER AS AT LEAST 1/1 ON THE ILO SCALE.

9 (K) "RADIOLOGICAL EVIDENCE OF DIFFUSE PLEURAL THICKENING"  
10 MEANS A QUALITY 1 CHEST X-RAY ON THE ILO SCALE OR, IF THE EXPOSED  
11 PERSON IS DECEASED AND PATHOLOGY AND A QUALITY 1 CHEST X-RAY ARE  
12 NOT AVAILABLE, A QUALITY 2 CHEST X-RAY, THAT SHOWS BILATERAL  
13 PLEURAL THICKENING OF AT LEAST B2 ON THE ILO SCALE AND BLUNTING OF  
14 AT LEAST 1 COSTOPHRENIC ANGLE.

15 SEC. 3003. AS USED IN THIS CHAPTER:

16 (A) "SILICA" MEANS A RESPIRABLE CRYSTALLINE FORM OF SILICON  
17 DIOXIDE, INCLUDING, BUT NOT LIMITED TO, ALPHA, QUARTZ,  
18 CRISTOBALITE, AND TRYDMITE.

19 (B) "SILICA CLAIM" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL OR  
20 EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION, ARISING OUT OF, BASED  
21 ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO SILICA,  
22 INCLUDING LOSS OF CONSORTIUM AND ANY OTHER DERIVATIVE CLAIM MADE BY  
23 OR ON BEHALF OF AN EXPOSED PERSON OR A REPRESENTATIVE, SPOUSE,  
24 PARENT, CHILD, OR OTHER RELATIVE OF AN EXPOSED PERSON. SILICA CLAIM  
25 DOES NOT INCLUDE A CLAIM FOR BENEFITS UNDER A WORKERS' COMPENSATION  
26 LAW OR VETERANS' BENEFITS PROGRAM OR CLAIMS BROUGHT BY A PERSON AS  
27 A SUBROGEE BY VIRTUE OF THE PAYMENT OF BENEFITS UNDER A WORKERS'



1 COMPENSATION LAW.

2 (C) "SILICOSIS" MEANS NODULAR INTERSTITIAL FIBROSIS OF THE  
3 LUNGS CAUSED BY INHALATION OF SILICA.

4 (D) "SMOKER" MEANS A PERSON WHO HAS SMOKED CIGARETTES OR USED  
5 ANOTHER TOBACCO PRODUCT WITHIN THE 15 YEARS IMMEDIATELY PRECEDING  
6 THE DIAGNOSIS THAT THE PERSON HAS A CONDITION OR DISEASE THAT IS  
7 THE BASIS FOR AN ASBESTOS OR SILICA CLAIM.

8 (E) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT  
9 OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE NORTHERN MARIANA  
10 ISLANDS, THE VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, AND ANY OTHER  
11 TERRITORY OR POSSESSION OF THE UNITED STATES OR A POLITICAL  
12 SUBDIVISION OF A POLITICAL ENTITY DEFINED AS A STATE.

13 (F) "SUBSTANTIAL CONTRIBUTING FACTOR" MEANS THAT ALL OF THE  
14 FOLLOWING APPLY:

15 (i) EXPOSURE TO ASBESTOS OR SILICA IS THE PREDOMINATE CAUSE OF  
16 THE PHYSICAL IMPAIRMENT ALLEGED IN THE CLAIM.

17 (ii) THE EXPOSURE TO ASBESTOS OR SILICA TOOK PLACE ON A REGULAR  
18 BASIS OVER AN EXTENDED PERIOD OF TIME AND IN CLOSE PROXIMITY TO THE  
19 EXPOSED PERSON.

20 (iii) A QUALIFIED PHYSICIAN HAS DETERMINED WITH A REASONABLE  
21 DEGREE OF MEDICAL CERTAINTY THAT THE PHYSICAL IMPAIRMENT OF THE  
22 EXPOSED PERSON WOULD NOT HAVE OCCURRED BUT FOR THE EXPOSURE TO  
23 ASBESTOS OR SILICA.

24 (G) "THIRD PARTY PAYER" MEANS A PUBLIC OR PRIVATE HEALTH CARE  
25 PAYMENT OR BENEFITS PROGRAM, INCLUDING, BUT NOT LIMITED TO, ALL OF  
26 THE FOLLOWING:

27 (i) A HEALTH INSURER.



(ii) A NONPROFIT HEALTH CARE CORPORATION.

(iii) A HEALTH MAINTENANCE ORGANIZATION.

(iv) A PREFERRED PROVIDER ORGANIZATION.

(v) MEDICAID OR MEDICARE.

(H) "VETERANS' BENEFIT PROGRAM" MEANS A PROGRAM FOR BENEFITS IN CONNECTION WITH MILITARY SERVICE ADMINISTERED BY THE VETERANS' ADMINISTRATION UNDER TITLE 38 OF THE UNITED STATES CODE.

(I) "WORKERS' COMPENSATION LAW" MEANS A LAW RESPECTING A PROGRAM ADMINISTERED BY A STATE OR THE UNITED STATES TO PROVIDE BENEFITS, FUNDED BY A RESPONSIBLE EMPLOYER OR ITS INSURANCE CARRIER, FOR OCCUPATIONAL DISEASES OR INJURIES OR FOR DISABILITY OR DEATH CAUSED BY OCCUPATIONAL DISEASES OR INJURIES. WORKERS' COMPENSATION LAW INCLUDES THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, 33 USC 901 TO 950, AND 5 USC 8101 TO 8193, POPULARLY KNOWN AS THE FEDERAL EMPLOYEES' COMPENSATION ACT. WORKERS' COMPENSATION LAW DOES NOT INCLUDE 45 USC 51 TO 60, POPULARLY KNOWN AS THE FEDERAL EMPLOYERS' LIABILITY ACT.

SEC. 3005. (1) A PERSON IS NOT ENTITLED TO ASSERT AN ASBESTOS CLAIM OR A SILICA CLAIM UNLESS THE EXPOSED PERSON HAS A PHYSICAL IMPAIRMENT TO WHICH ASBESTOS OR SILICA EXPOSURE WAS A SUBSTANTIAL CONTRIBUTING FACTOR.

(2) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION ALLEGING AN ASBESTOS CLAIM BASED ON A NONMALIGNANT CONDITION UNLESS THE PERSON MAKES A PRIMA FACIE SHOWING THAT THE EXPOSED PERSON HAS OR HAD A PHYSICAL IMPAIRMENT RESULTING FROM A MEDICAL CONDITION TO WHICH EXPOSURE TO ASBESTOS WAS A SUBSTANTIAL CONTRIBUTING FACTOR. A PRIMA FACIE SHOWING REQUIRED BY THIS SUBSECTION INCLUDES, AT A





1 MINIMUM, ALL OF THE FOLLOWING:

2 (A) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A  
3 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON  
4 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS  
5 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE  
6 ASBESTOS CLAIM, INCLUDING BOTH OF THE FOLLOWING:

7 (i) THE IDENTIFICATION OF ALL OF THE EXPOSED PERSON'S PRINCIPAL  
8 PLACES OF EMPLOYMENT AND EXPOSURES TO AIRBORNE CONTAMINANTS.

9 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO  
10 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, ASBESTOS  
11 FIBERS OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY  
12 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF EACH EXPOSURE.

13 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A  
14 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW  
15 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE  
16 MOST PROBABLE CAUSE OF THE PROBLEMS.

17 (C) A DETERMINATION BY A QUALIFIED PHYSICIAN, ON THE BASIS OF  
18 A MEDICAL EXAMINATION AND PULMONARY FUNCTION TESTING, THAT THE  
19 EXPOSED PERSON HAS OR HAD A PERMANENT RESPIRATORY IMPAIRMENT RATING  
20 OF AT LEAST CLASS 2 AS DEFINED BY AND EVALUATED PURSUANT TO THE AMA  
21 GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.

22 (D) A DIAGNOSIS BY A QUALIFIED PHYSICIAN OF ASBESTOSIS OR  
23 DIFFUSE PLEURAL THICKENING, BASED AT A MINIMUM ON RADIOLOGICAL OR  
24 PATHOLOGICAL EVIDENCE OF ASBESTOSIS OR RADIOLOGICAL EVIDENCE OF  
25 DIFFUSE PLEURAL THICKENING.

26 (E) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT ASBESTOSIS  
27 OR DIFFUSE PLEURAL THICKENING, RATHER THAN CHRONIC OBSTRUCTIVE



PULMONARY DISEASE, IS OR WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE EXPOSED PERSON'S PHYSICAL IMPAIRMENT, BASED AT A MINIMUM ON A DETERMINATION THAT THE EXPOSED PERSON HAS OR HAD 1 OR MORE OF THE FOLLOWING:

(i) TOTAL LUNG CAPACITY, BY PLETHYSMOGRAPHY OR TIMED GAS DILUTION, BELOW THE PREDICTED LOWER LIMIT OF NORMAL.

(ii) FVC BELOW THE LOWER LIMIT OF NORMAL AND A RATIO OF FEV1 TO FVC THAT IS EQUAL TO OR GREATER THAN THE PREDICTED LOWER LIMIT OF NORMAL.

(iii) A CHEST X-RAY SHOWING SMALL, IRREGULAR OPACITIES (S, T) GRADED BY A CERTIFIED "B" READER AT LEAST 2/1 ON THE ILO SCALE.

(F) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

(3) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION ALLEGING AN ASBESTOS CLAIM BASED ON LUNG CANCER UNLESS THE PERSON MAKES A PRIMA FACIE SHOWING THAT INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING:

(A) DIAGNOSIS BY A QUALIFIED PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY, PULMONARY MEDICINE, OR ONCOLOGY OF A PRIMARY LUNG CANCER AND THAT EXPOSURE TO ASBESTOS WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE CANCER.

(B) EVIDENCE SUFFICIENT TO DEMONSTRATE THAT AT LEAST 10 YEARS HAVE ELAPSED BETWEEN THE DATE OF FIRST EXPOSURE TO ASBESTOS AND THE DATE OF DIAGNOSIS OF THE LUNG CANCER.

(C) EITHER OF THE FOLLOWING:



1 (i) IF THE EXPOSED PERSON IS A NONSMOKER, EITHER OF THE  
2 FOLLOWING:

3 (A) RADIOLOGICAL OR PATHOLOGICAL EVIDENCE OF ASBESTOSIS.

4 (B) EVIDENCE OF OCCUPATIONAL EXPOSURE TO ASBESTOS FOR 1 OR  
5 MORE OF THE FOLLOWING MINIMUM EXPOSURE PERIODS:

6 (I) FIVE EXPOSURE YEARS IF THE EXPOSED PERSON WAS AN  
7 INSULATOR, SHIPYARD WORKER, WORKER IN A MANUFACTURING PLANT  
8 HANDLING RAW ASBESTOS, BOILERMAKER, SHIPFITTER, OR STEAMFITTER OR  
9 WORKED IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

10 (II) TEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS A UTILITY OR  
11 POWER HOUSE WORKER OR SECONDARY MANUFACTURING WORKER OR WORKED IN  
12 ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

13 (III) FIFTEEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS IN  
14 GENERAL CONSTRUCTION, A MAINTENANCE WORKER, A CHEMICAL OR REFINERY  
15 WORKER, MARINE ENGINE ROOM PERSONNEL OR OTHER PERSONNEL ON A  
16 VESSEL, A STATIONARY ENGINEER OR FIREMAN, OR A RAILROAD ENGINE  
17 REPAIR WORKER OR WORKED IN ANOTHER TRADE PERFORMING SIMILAR  
18 FUNCTIONS.

19 (ii) IF THE EXPOSED PERSON IS A SMOKER, THE REQUIREMENTS OF  
20 BOTH SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (i).

21 (D) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED  
22 PERSON'S MEDICAL FINDINGS AND PHYSICAL IMPAIRMENT WERE NOT MORE  
23 PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE  
24 REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

25 (4) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION  
26 ALLEGING AN ASBESTOS CLAIM BASED ON CANCER OF THE COLON, RECTUM,  
27 LARYNX, PHARYNX, ESOPHAGUS, OR STOMACH UNLESS THE PERSON MAKES A



1 PRIMA FACIE SHOWING THAT INCLUDES, AT A MINIMUM, ALL OF THE  
2 FOLLOWING:

3 (A) A DIAGNOSIS BY A QUALIFIED PHYSICIAN WHO IS BOARD-  
4 CERTIFIED IN PATHOLOGY, PULMONARY MEDICINE, OR ONCOLOGY OF PRIMARY  
5 CANCER OF THE COLON, RECTUM, LARYNX, PHARYNX, ESOPHAGUS, OR  
6 STOMACH, AS APPLICABLE, AND THAT EXPOSURE TO ASBESTOS WAS A  
7 SUBSTANTIAL CONTRIBUTING FACTOR TO THE CANCER.

8 (B) EVIDENCE SUFFICIENT TO DEMONSTRATE THAT AT LEAST 10 YEARS  
9 HAVE ELAPSED BETWEEN THE DATE OF FIRST EXPOSURE TO ASBESTOS AND THE  
10 DATE OF DIAGNOSIS OF THE CANCER.

11 (C) ONE OR BOTH OF THE FOLLOWING:

12 (i) RADIOLOGICAL OR PATHOLOGICAL EVIDENCE OF ASBESTOSIS.

13 (ii) EVIDENCE OF OCCUPATIONAL EXPOSURE TO ASBESTOS FOR 1 OR  
14 MORE OF THE FOLLOWING MINIMUM EXPOSURE PERIODS:

15 (A) FIVE EXPOSURE YEARS IF THE EXPOSED PERSON WAS AN  
16 INSULATOR, SHIPYARD WORKER, WORKER IN A MANUFACTURING PLANT  
17 HANDLING RAW ASBESTOS, BOILERMAKER, SHIPFITTER, OR STEAMFITTER OR  
18 WORKER IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

19 (B) TEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS A UTILITY OR  
20 POWER HOUSE WORKER OR SECONDARY MANUFACTURING WORKER OR WORKER IN  
21 ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

22 (C) FIFTEEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS IN  
23 GENERAL CONSTRUCTION, A MAINTENANCE WORKER, A CHEMICAL OR REFINERY  
24 WORKER, MARINE ENGINE ROOM PERSONNEL OR OTHER PERSONNEL ON A  
25 VESSEL, A STATIONARY ENGINEER OR FIREMAN, A RAILROAD ENGINE REPAIR  
26 WORKER, OR A WORKER IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

27 (D) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED



1 PERSON'S MEDICAL FINDINGS AND PHYSICAL IMPAIRMENT WERE NOT MORE  
2 PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE  
3 REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

4 (5) A PRIMA FACIE SHOWING UNDER THIS SECTION IS NOT REQUIRED  
5 IN A CIVIL ACTION ALLEGING AN ASBESTOS CLAIM BASED ON MESOTHELIOMA.

6 (6) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION  
7 ALLEGING A SILICOSIS CLAIM UNLESS THE PERSON MAKES A PRIMA FACIE  
8 SHOWING THAT THE EXPOSED PERSON SUFFERED A PHYSICAL IMPAIRMENT AS A  
9 RESULT OF A MEDICAL CONDITION TO WHICH EXPOSURE TO SILICA WAS A  
10 SUBSTANTIAL CONTRIBUTING FACTOR. A PRIMA FACIE SHOWING UNDER THIS  
11 SUBSECTION SHALL INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:

12 (A) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A  
13 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON  
14 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS  
15 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE  
16 NONMALIGNANT SILICA CLAIM, WHICH HISTORY INCLUDES ALL OF THE  
17 FOLLOWING:

18 (i) ALL OF THE EXPOSED PERSON'S PRINCIPAL PLACES OF EMPLOYMENT  
19 AND EXPOSURES TO AIRBORNE CONTAMINANTS.

20 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO  
21 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, SILICA  
22 PARTICLES OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY  
23 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF ANY SUCH  
24 EXPOSURE.

25 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A  
26 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW  
27 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE



1 MOST PROBABLE CAUSE OF THE PROBLEMS, AND VERIFYING A SUFFICIENT  
2 LATENCY PERIOD FOR THE APPLICABLE STAGE OF SILICOSIS.

3 (C) A DETERMINATION BY A QUALIFIED PHYSICIAN, ON THE BASIS OF  
4 A MEDICAL EXAMINATION AND PULMONARY FUNCTION TESTING, THAT THE  
5 EXPOSED PERSON HAS A PERMANENT RESPIRATORY IMPAIRMENT RATING OF AT  
6 LEAST CLASS 2 AS DEFINED BY AND EVALUATED PURSUANT TO THE AMA  
7 GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.

8 (D) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED  
9 PERSON HAS EITHER OF THE FOLLOWING:

10 (i) A QUALITY 1 CHEST X-RAY UNDER THE ILO SCALE OR, IF THE  
11 EXPOSED PERSON IS DECEASED AND PATHOLOGY AND QUALITY 1 X-RAY ARE  
12 NOT AVAILABLE, A QUALITY 2 X-RAY, THAT HAS BEEN READ BY A CERTIFIED  
13 "B" READER AS SHOWING, ACCORDING TO THE ILO SCALE, BILATERAL  
14 NODULAR OPACITIES (P, Q, OR R) OCCURRING PRIMARILY IN THE UPPER  
15 LUNG FIELDS, GRADED 1/1 OR HIGHER.

16 (ii) PATHOLOGICAL DEMONSTRATION OF CLASSIC SILICOTIC NODULES  
17 EXCEEDING 1 CENTIMETER IN DIAMETER AS PUBLISHED IN 112 ARCHIVE OF  
18 PATHOLOGY AND LABORATORY MEDICINE 7 (JULY 1988).

19 (E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED  
20 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE  
21 RESULT OF CAUSES OTHER THAN THE SILICA EXPOSURE REVEALED BY THE  
22 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

23 (7) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION  
24 ALLEGING A SILICA CLAIM OTHER THAN A CLAIM DESCRIBED IN SUBSECTION  
25 (6) UNLESS THE PERSON MAKES A PRIMA FACIE SHOWING THAT INCLUDES, AT  
26 A MINIMUM, ALL OF THE FOLLOWING:

27 (A) A REPORT THAT MEETS EITHER OF THE FOLLOWING REQUIREMENTS:



1 (i) THE REPORT IS BY A PHYSICIAN WHO IS BOARD-CERTIFIED IN  
2 PULMONARY MEDICINE, INTERNAL MEDICINE, ONCOLOGY, OR PATHOLOGY AND  
3 STATES A DIAGNOSIS OF THE EXPOSED PERSON OF SILICA-RELATED LUNG  
4 CANCER AND THAT, TO A REASONABLE DEGREE OF MEDICAL PROBABILITY,  
5 EXPOSURE TO SILICA WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE  
6 DIAGNOSED LUNG CANCER.

7 (ii) THE REPORT IS BY A PHYSICIAN WHO IS BOARD-CERTIFIED IN  
8 PULMONARY MEDICINE, INTERNAL MEDICINE, OR PATHOLOGY AND STATES A  
9 DIAGNOSIS OF THE EXPOSED PERSON OF SILICA-RELATED PROGRESSIVE  
10 MASSIVE FIBROSIS OR ACUTE SILICOPROTEINOSIS OR OF SILICOSIS  
11 COMPLICATED BY DOCUMENTED TUBERCULOSIS.

12 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A  
13 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON  
14 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS  
15 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE  
16 NONMALIGNANT SILICA CLAIM, WHICH HISTORY INCLUDES BOTH OF THE  
17 FOLLOWING:

18 (i) ALL OF THE EXPOSED PERSON'S PRINCIPAL PLACES OF EMPLOYMENT  
19 AND EXPOSURES TO AIRBORNE CONTAMINANTS.

20 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO  
21 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, SILICA  
22 PARTICLES OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY  
23 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF THE EXPOSURE.

24 (C) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A  
25 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW  
26 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE  
27 MOST PROBABLE CAUSE OF THE PROBLEMS.



(D) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED PERSON HAS EITHER OF THE FOLLOWING:

(i) A QUALITY 1 CHEST X-RAY UNDER THE ILO SCALE OR, IF THE EXPOSED PERSON IS DECEASED AND PATHOLOGY AND A QUALITY 1 CHEST X-RAY ARE NOT AVAILABLE, A QUALITY 2 CHEST X-RAY, THAT HAS BEEN READ BY A CERTIFIED "B" READER AS SHOWING, ACCORDING TO THE ILO SCALE, BILATERAL NODULAR OPACITIES (P, Q, OR R) OCCURRING PRIMARILY IN THE UPPER LUNG FIELDS, GRADED 1/1 OR HIGHER.

(ii) PATHOLOGICAL DEMONSTRATION OF CLASSIC SILICOTIC NODULES EXCEEDING 1 CENTIMETER IN DIAMETER AS PUBLISHED IN 112 ARCHIVE OF PATHOLOGY AND LABORATORY MEDICINE 7 (JULY 1988).

(E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE RESULT OF CAUSES OTHER THAN THE SILICA EXPOSURE REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

(8) TO QUALIFY FOR CONSIDERATION UNDER THIS SECTION AS EVIDENCE RELATING TO PHYSICAL IMPAIRMENT, EVIDENCE, INCLUDING PULMONARY FUNCTION TESTING AND DIFFUSING STUDIES, SHALL MEET ALL OF THE FOLLOWING CRITERIA:

(A) COMPLY WITH THE TECHNICAL RECOMMENDATIONS FOR EXAMINATIONS, TESTING PROCEDURES, QUALITY ASSURANCE, QUALITY CONTROL, AND EQUIPMENT OF THE AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT, AS SET FORTH IN 20 CFR PART 404, SUBPART P, APPENDIX 1, PART A, SECTION 3.00 E. AND F., AND THE INTERPRETIVE STANDARDS IN THE OFFICIAL STATEMENT OF THE AMERICAN THORACIC SOCIETY ENTITLED "LUNG FUNCTION TESTING: SELECTION OF REFERENCE VALUES AND INTERPRETIVE STRATEGIES" AS PUBLISHED IN AMERICAN REVIEW





1 OF RESPIRATORY DISEASE, 1991: 144:1202-1218.

2 (B) NOT BE OBTAINED THROUGH TESTING OR EXAMINATIONS THAT  
3 VIOLATE ANY APPLICABLE LAW, REGULATION, LICENSING REQUIREMENT, OR  
4 MEDICAL CODE OF PRACTICE.

5 (C) NOT BE OBTAINED UNDER THE CONDITION THAT THE EXPOSED  
6 PERSON RETAIN LEGAL SERVICES IN EXCHANGE FOR THE EXAMINATION, TEST,  
7 OR SCREENING.

8 (9) FOR PURPOSES OF THIS SECTION, THE NUMBER OF EXPOSURE YEARS  
9 SHALL BE DETERMINED AS FOLLOWS:

10 (A) EACH SINGLE YEAR OF EXPOSURE PRIOR TO 1972 SHALL BE  
11 COUNTED AS 1 YEAR.

12 (B) SUBJECT TO SUBDIVISION (D), EACH SINGLE YEAR OF EXPOSURE  
13 FROM 1972 THROUGH 1979 SHALL BE COUNTED AS 1/2 YEAR.

14 (C) SUBJECT TO SUBDIVISION (D), EXPOSURE AFTER 1979 SHALL NOT  
15 BE COUNTED.

16 (D) EACH YEAR AFTER 1971 FOR WHICH THE PLAINTIFF CAN ESTABLISH  
17 EXPOSURE EXCEEDING THE UNITED STATES DEPARTMENT OF LABOR  
18 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION LIMIT FOR 8-HOUR  
19 TIME-WEIGHTED AVERAGE AIRBORNE CONCENTRATION FOR A SUBSTANTIAL  
20 PORTION OF THE YEAR SHALL BE COUNTED AS 1 YEAR.

21 (10) ALL OF THE FOLLOWING APPLY TO A RULING BY A COURT THAT A  
22 PLAINTIFF HAS SATISFACTORILY PRESENTED PRIMA FACIE EVIDENCE TO MEET  
23 THE APPLICABLE REQUIREMENTS OF THIS SECTION:

24 (A) THE RULING DOES NOT RAISE A PRESUMPTION AT TRIAL THAT THE  
25 EXPOSED PERSON IS IMPAIRED BY AN ASBESTOS- OR SILICA-RELATED  
26 CONDITION.

27 (B) THE RULING IS NOT CONCLUSIVE AS TO THE LIABILITY OF ANY



1 DEFENDANT.

2 (C) THE RULING IS NOT ADMISSIBLE AT TRIAL.

3 SEC. 3007. (1) A COURT MAY CONSOLIDATE FOR TRIAL ANY NUMBER  
4 AND TYPE OF ASBESTOS OR SILICA CLAIMS IF ALL OF THE PARTIES TO THE  
5 CLAIMS CONSENT. IF ALL OF THE PARTIES TO THE CLAIMS DO NOT CONSENT,  
6 THE COURT MAY CONSOLIDATE FOR TRIAL ONLY ASBESTOS OR SILICA CLAIMS  
7 RELATING TO THE SAME EXPOSED PERSON AND MEMBERS OF THE EXPOSED  
8 PERSON'S HOUSEHOLD.

9 (2) A CIVIL ACTION ALLEGING AN ASBESTOS OR SILICA CLAIM MAY  
10 ONLY BE BROUGHT IN THIS STATE IF THE EXPOSURE TO ASBESTOS OR SILICA  
11 ON WHICH THE CLAIM IS BASED OCCURRED IN THIS STATE.

12 (3) THE PLAINTIFF IN A CIVIL ACTION ALLEGING AN ASBESTOS OR  
13 SILICA CLAIM SHALL FILE WITH THE COMPLAINT OR OTHER INITIAL  
14 PLEADING A WRITTEN REPORT AND SUPPORTING TEST RESULTS THAT  
15 CONSTITUTE PRIMA FACIE EVIDENCE OF THE EXPOSED PERSON'S ASBESTOS-  
16 OR SILICA-RELATED PHYSICAL IMPAIRMENT THAT MEETS THE APPLICABLE  
17 REQUIREMENTS OF SECTION 3005. IN AN ASBESTOS OR SILICA CLAIM  
18 PENDING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
19 CHAPTER, THE PLAINTIFF SHALL FILE A WRITTEN REPORT AND SUPPORTING  
20 TEST RESULTS THAT COMPLY WITH THIS SUBSECTION NOT LATER THAN 60  
21 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
22 CHAPTER OR 30 DAYS BEFORE THE COMMENCEMENT OF TRIAL OF THE ACTION,  
23 WHICHEVER OCCURS FIRST.

24 (4) A COURT SHALL GIVE A DEFENDANT IN A CIVIL ACTION THAT  
25 INCLUDES AN ASBESTOS OR SILICA CLAIM A REASONABLE OPPORTUNITY TO  
26 CHALLENGE THE ADEQUACY OF PRIMA FACIE EVIDENCE OF AN ASBESTOS- OR  
27 SILICA-RELATED IMPAIRMENT OFFERED UNDER THIS CHAPTER.



(5) IF A COURT DETERMINES THAT A PLAINTIFF HAS FAILED TO MAKE THE PRIMA FACIE SHOWING REQUIRED BY THIS CHAPTER, THE PLAINTIFF'S CLAIM SHALL BE DISMISSED WITHOUT PREJUDICE.

SEC. 3009. (1) THE PERIOD OF LIMITATIONS FOR AN ASBESTOS OR SILICA CLAIM THAT IS NOT BARRED AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER ACCRUES WHEN THE EXPOSED PERSON DISCOVERS, OR THROUGH THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE DISCOVERED, THAT HE OR SHE IS PHYSICALLY IMPAIRED BY AN ASBESTOS- OR SILICA-RELATED CONDITION.

(2) AN ASBESTOS OR SILICA CLAIM ARISING OUT OF A NONMALIGNANT CONDITION IS A DISTINCT CAUSE OF ACTION FROM AN ASBESTOS OR SILICA CLAIM RELATING TO THE SAME EXPOSED PERSON ARISING OUT OF ASBESTOS- OR SILICA-RELATED CANCER.

(3) DAMAGES FOR FEAR OR RISK OF CANCER SHALL NOT BE AWARDED IN A CIVIL ACTION ASSERTING AN ASBESTOS OR SILICA CLAIM.

(4) THE SETTLEMENT OF A NONMALIGNANT ASBESTOS OR SILICA CLAIM CONCLUDED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER SHALL NOT REQUIRE, AS A CONDITION OF THE SETTLEMENT, THE RELEASE OF ANY FUTURE CLAIM FOR ASBESTOS- OR SILICA-RELATED CANCER.

SEC. 3011. (1) THE LIMITATIONS ON DAMAGES, AS ADJUSTED, IN SECTION 2946A APPLY IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS CLAIM, REGARDLESS OF WHETHER THE ACTION IS A PRODUCT LIABILITY ACTION.

(2) PUNITIVE DAMAGES SHALL NOT BE AWARDED IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR SILICA CLAIM.

(3) AT THE TIME A COMPLAINT IS FILED IN A CIVIL ACTION THAT



1 INCLUDES AN ASBESTOS OR SILICA CLAIM, THE PLAINTIFF SHALL FILE A  
2 VERIFIED WRITTEN REPORT WITH THE COURT THAT DISCLOSES THE TOTAL  
3 AMOUNT OF ANY COLLATERAL SOURCE PAYMENTS RECEIVED, INCLUDING  
4 PAYMENTS THE PLAINTIFF WILL RECEIVE IN THE FUTURE, AS A RESULT OF  
5 SETTLEMENTS OR JUDGMENTS BASED ON THE SAME CLAIM. IN A CIVIL ACTION  
6 ALLEGING AN ASBESTOS OR SILICA CLAIM PENDING ON THE EFFECTIVE DATE  
7 OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER, THE PLAINTIFF SHALL  
8 FILE THE VERIFIED WRITTEN REPORT REQUIRED BY THIS SUBSECTION NOT  
9 LATER THAN 60 DAYS AFTER THE EFFECTIVE DATE OF THE ACT THAT ADDED  
10 THIS CHAPTER OR 30 DAYS BEFORE THE COMMENCEMENT OF TRIAL OF THE  
11 ACTION, WHICHEVER OCCURS FIRST.

12 (4) A PLAINTIFF IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR  
13 SILICA CLAIM SHALL FILE UPDATED REPORTS DISCLOSING THE TOTAL AMOUNT  
14 OF COLLATERAL SOURCE PAYMENTS RECEIVED, OR TO BE RECEIVED IN THE  
15 FUTURE, ON A REGULAR BASIS UNTIL A FINAL JUDGMENT IS ENTERED IN THE  
16 ACTION.

17 (5) A COURT SHALL ENSURE THAT INFORMATION CONTAINED IN THE  
18 INITIAL AND UPDATED REPORTS REQUIRED BY SUBSECTIONS (3) AND (4) ARE  
19 TREATED AS PRIVILEGED AND CONFIDENTIAL AND THAT THE CONTENTS OF THE  
20 REPORTS ARE NOT DISCLOSED TO ANYONE EXCEPT THE OTHER PARTIES TO THE  
21 ACTION.

22 SEC. 3013. A MANUFACTURER OF A PRODUCT IS ONLY LIABLE FOR  
23 DAMAGES IN AN ASBESTOS CLAIM OR A SILICA CLAIM UNDER 1 OR MORE OF  
24 THE FOLLOWING LEGAL THEORIES:

25 (A) FAILURE TO WARN.

26 (B) FAILURE TO TEST.

27 (C) NEGLIGENT DESIGN.



1 (D) BREACH OF IMPLIED WARRANTY.

2 (E) GROSS NEGLIGENCE.

3 SEC. 3015. (1) A PRODUCT SELLER OTHER THAN A MANUFACTURER IS  
4 LIABLE TO A PLAINTIFF IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS  
5 OR SILICA CLAIM ONLY IF THE PLAINTIFF ESTABLISHES 1 OR MORE OF THE  
6 FOLLOWING:

7 (A) ALL OF THE FOLLOWING:

8 (i) THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE  
9 SUBJECT OF THE COMPLAINT WAS SOLD, RENTED, OR LEASED BY THE PRODUCT  
10 SELLER.

11 (ii) THE PRODUCT SELLER FAILED TO EXERCISE REASONABLE CARE WITH  
12 RESPECT TO THE PRODUCT.

13 (iii) THE FAILURE TO EXERCISE REASONABLE CARE WAS A PROXIMATE  
14 CAUSE OF THE HARM TO THE EXPOSED PERSON.

15 (B) ALL OF THE FOLLOWING:

16 (i) THE PRODUCT SELLER MADE AN EXPRESS WARRANTY APPLICABLE TO  
17 THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE SUBJECT OF  
18 THE COMPLAINT, INDEPENDENT OF ANY EXPRESS WARRANTY MADE BY THE  
19 MANUFACTURER AS TO THE SAME PRODUCT.

20 (ii) THE PRODUCT FAILED TO CONFORM TO THE WARRANTY.

21 (iii) THE FAILURE OF THE PRODUCT TO CONFORM TO THE WARRANTY  
22 CAUSED THE HARM TO THE EXPOSED PERSON.

23 (C) BOTH OF THE FOLLOWING:

24 (i) THE PRODUCT SELLER ENGAGED IN INTENTIONAL WRONGDOING, AS  
25 DETERMINED UNDER APPLICABLE STATE LAW.

26 (ii) THE INTENTIONAL WRONGDOING CAUSED THE HARM THAT IS THE  
27 SUBJECT OF THE COMPLAINT.



(2) FOR PURPOSES OF SUBSECTION (1)(A)(ii), A PRODUCT SELLER'S FAILURE TO INSPECT THE PRODUCT IS NOT A FAILURE TO EXERCISE REASONABLE CARE WITH RESPECT TO THE PRODUCT IF EITHER OF THE FOLLOWING APPLIES:

(A) THE FAILURE OCCURRED BECAUSE THERE WAS NO REASONABLE OPPORTUNITY TO INSPECT THE PRODUCT.

(B) AN INSPECTION OF THE PRODUCT, IN THE EXERCISE OF REASONABLE CARE, WOULD NOT HAVE REVEALED THE ASPECT OF THE PRODUCT THAT ALLEGEDLY CAUSED THE EXPOSED PERSON'S IMPAIRMENT.

(3) IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR SILICA CLAIM, A PERSON ENGAGED IN THE BUSINESS OF RENTING OR LEASING A PRODUCT IS NOT LIABLE FOR THE TORTIOUS ACT OF ANOTHER SOLELY BY REASON OF OWNERSHIP OF THE PRODUCT.

SEC. 3017. THIS CHAPTER DOES NOT AFFECT THE SCOPE OR OPERATION OF ANY WORKERS' COMPENSATION LAW OR VETERANS' BENEFIT PROGRAM OR THE EXCLUSIVE REMEDY OR SUBROGATION PROVISIONS OF ANY SUCH LAW OR AUTHORIZE ANY LAWSUIT THAT IS BARRED BY SUCH LAW.

SEC. 3019. THIS CHAPTER APPLIES TO A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR SILICA CLAIM IN WHICH TRIAL HAS NOT COMMENCED AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER.

Sec. 5827. Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to ~~5838~~ 5840, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.



1        SEC. 5840. (1) AN ASBESTOS OR SILICA CLAIM DESCRIBED IN  
2        SECTION 3009(1) ACCRUES AS PROVIDED IN SECTION 3009(1).

3        (2) AS USED IN THIS SECTION:

4        (A) "ASBESTOS CLAIM" MEANS THAT TERM AS DEFINED IN SECTION  
5        3001.

6        (B) "SILICA CLAIM" MEANS THAT TERM AS DEFINED IN SECTION 3003.



